

MONTANA LEGISLATIVE HISTORY

Chapter 684 19 91

Bill H 26 S _____ Original bill & history C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 14 ☒ C

Hearing Date(s) Jan 30 ☒ C

Jan 18 ☒ C

Feb 05 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Jan 21 ☒ C

Feb 06 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

Note: A Conference Committee was appointed. Its minutes were not recorded.

3/11 TRANSMITTED TO GOVERNOR
3/14 SIGNED BY GOVERNOR
CHAPTER NUMBER 67

EFFECTIVE DATE: 3/13/91

HB 24 INTRODUCED BY CODY
ALLOW CONSIDERATION OF AGE, MARITAL STATUS,
AND RELIGION IN ADOPTIONS

12/27	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/14	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/21	2ND READING PASSED	94	4
1/23	3RD READING PASSED	93	7
	TRANSMITTED TO SENATE		
1/24	REFERRED TO JUDICIARY		
1/24	FIRST READING		
1/30	HEARING		
2/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/16	2ND READING CONCURRED	39	10
2/18	3RD READING CONCURRED	38	12
	RETURNED TO HOUSE WITH AMENDMENTS		
3/09	2ND READING AMENDMENTS CONCURRED	87	4
3/11	3RD READING AMENDMENTS CONCURRED	97	2
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 602		

EFFECTIVE DATE: 7/01/91

HB 25 INTRODUCED BY CODY
REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS

12/27	INTRODUCED		
12/27	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/14	HEARING		
1/15	COMMITTEE REPORT—BILL PASSED		
1/17	2ND READING PASSED	92	7
1/19	3RD READING PASSED	91	1
	TRANSMITTED TO SENATE		
1/21	REFERRED TO JUDICIARY		
1/21	FIRST READING		
1/30	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	48	0
2/11	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 683		

EFFECTIVE DATE: 7/01/91

HB 26 INTRODUCED BY CODY
REQUIRE HOMESTUDY AND COUNSELING
IN PRIVATE PLACEMENT ADOPTIONS

12/27	INTRODUCED
12/27	REFERRED TO JUDICIARY
1/07	FIRST READING
1/14	HEARING

HOUSE FINAL STATUS

HB 28

1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	100	0
1/25	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
1/25	REFERRED TO JUDICIARY		
1/26	FIRST READING		
1/30	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/09	2ND READING CONCURRED	48	0
2/11	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/09	2ND READING AMENDMENTS NOT CONCURRED	91	0
3/11	CONFERENCE COMMITTEE APPOINTED		
4/19	CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	0
4/20	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	0
	SENATE		
3/12	CONFERENCE COMMITTEE APPOINTED		
4/19	CONFERENCE COMMITTEE REPORT NO. 1		
4/20	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/22	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 684		
	EFFECTIVE DATE: 7/01/91		

HB 27 INTRODUCED BY FOSTER

EXEMPT EMPLOYMENT OF SUBSTITUTE TEACHERS
FROM NEPOTISM LAWS

12/27	INTRODUCED		
12/27	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/07	FIRST READING		
1/14	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	96	1
1/28	3RD READING PASSED	89	9
	TRANSMITTED TO SENATE		
1/29	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/29	FIRST READING		
2/06	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
2/09	2ND READING CONCURRED	48	0
2/11	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
2/23	SIGNED BY SPEAKER		
2/25	SIGNED BY PRESIDENT		
2/25	TRANSMITTED TO GOVERNOR		
2/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 55		
	EFFECTIVE DATE: 10/01/91		

HB 28 INTRODUCED BY H.S. HANSON

REQUIRE PUBLIC CONTRACTS AND BID SPECIFICATIONS
TO STATE PREVAILING WAGE RATE

12/27 INTRODUCED

Bill Driscoll, stated the practice of the agencies is if the child comes out of the hospital before three days they will still pay the physical relinquishing custody of a natural parent and place a child in a foster care during that time. The natural parent retains that 72 hour period to think about what they are doing and are comfortable with the decision before they actually relinquish their rights as the parent.

Karen Northy, stated that the Florence Critendon home is not an adoption agency. We do not deal with adoptions other than an option for the girls to choose what they need to do. We find that it is critical for the girls to be able to have time to make a decision after having a baby. They find they are comfortable with the choice they make until going into the hospital and delivering the baby. After this, they are sometimes undecided about their decision and with having 72 hours to think about what they are doing they feel much more comfortable with the final outcome of their decision.

Opponents' Testimony: none

Questions From Committee Members:

REP. RICE asked REP. CODY about the adopted parents having to wait for relinquishment of the child by the natural mother and not being able to pick the child up from the hospital? REP. CODY stated to some extent it is a concern, particularly to the adoptive parents. The big concern should not be that problem, because regardless of this law if we pass it, they can still back out on the contract until the final decree of adoption.

REP. MESSMORE asked REP. CODY what the current time limit for the mother to be able to change her mind about relinquishing her rights as a parent? REP. CODY stated there is none. REP. MESSMORE then asked REP. CODY where the signing is done? REP. CODY stated the signing is done in court after 72 hours.

Closing by Sponsor: NONE

HEARING ON HB #26

REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE CODY, HOUSE DISTRICT 20, stated HB #26 is as important as HB #24. Because of the fact, that the majority of adoptions that take place in the state of Montana are done on a direct non-agency basis, that are unregulated, we feel that this legislation will help us as a state to say it is an option to any individual and we feel there are certain aspects that are important to adoption. It is not just a simple procedure. It is a procedure that has a long term effect on all individuals involved. This bill requires counselling for the birth mother if

the adoption is by a non-relative. It also requires an investigation into the home situation.

Proponents' Testimony:

Rebecca Jones, Shodair Hospital, stated she was speaking on behalf of the Montana Interagency Adoption Council. This bill will increase government supervision and direction in independent adoptions in Montana. It requires that both the adoptive parents and the birth parents, if wishing to be involved, receive counseling prior to the adoption. This is important to as a private agency because when we are counseling with the birth parents we have an opportunity to share and help them look at all their options.

Karen Northy, Florence Critendon Home, stated she sees young girls who are 12, 13 or 14 years old making a decision for private adoption. We are able to give them some counseling, but even with this they are under alot of pressure to follow what decisions are being made by other family members. They often feel trapped and that they aren't really making their own decisions. Having counseling for these girls will help them realize they do have authority where their child will be placed. To council the adopted parents is a plus so they can see what they are in for and their home is going to be a home for a young child and it an important matter.

Betty Bay, Dept. of Family Services, gave written testimony in support of HB #26. EXHIBIT 4

Opponents' Testimony: none

Questions From Committee Members:

REP. RICE asked REP. CODY if by including counseling for the father, we have added unnecessary paper work to an already lengthy process. REP. CODY stated it was necessary to find the natural father to relinquish parental rights and having him sign a paper denying or accepting counseling will not add any extra burden to the process.

REP. RICE asked REP. CODY if having the birth mother go back into court to sign the final papers after going through the trauma of giving up her child, was not a good idea. REP. CODY stated these are direct adoption agencies we are speaking about. In these cases it is a difficult role that is going on. It is between individual to individual and this doesn't seem to be a problem. If you can think of other language to address this, I would be willing to listen to it.

REP. RICE asked REP. CODY if all adoption processes require a home study investigation? REP. CODY stated this legislation is directed at 1 to 1 individual and there is no regulation at all.

REP. TOOLE asked REP. CODY if it is the intent of this bill to have a home study procedure and counseling required for all agencies, that you believe not to be required by the law at this time. REP. CODY stated that was correct.

Closing by Sponsor:

REP. CODY stated it is an extra big issue but also a human issue. The committee has the opportunity as a Judicial Committee to do the right thing in adoption laws by passing this legislation. This legislation is extremely necessary because adoption services are very important to many people. It is important that we state, as a legislative body, we are concerned about the children, the natural parents, and the adoptive parents interests. We cover all of this in the three pieces of legislation we have talked about today and have done it in a manner that will benefit all the citizens we represent.

HEARING ON HB 109
PROVIDE VICTIM AND WITNESS ASSISTANCE IN JUVENILE FELONY CASES

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BROOKE, HOUSE DISTRICT 56, stated this bill is an act providing victims and witnesses of juvenile felony offenses the same services in the system that must be provided to victims and witnesses of crimes. The primary purpose of the fund is to provide financial assistance to innocent victims of a crime. If a crime results in a death, funeral expenses up to \$2000.00 is covered. This gives you an idea of what we are after with this bill. At this time, the Crime Victims Fund has been treating the juvenile felony victims as eligible, but it is not clearly spelled out in code that these victims are covered.

Proponents' Testimony:

Candy Wimmer, Montana Board of Crime Control, stated this bill will extend to victims of juvenile felonies the same notification process that are available to victims of adult crimes, that primarily will be a function of the county attorney's office, will keep victims of crimes informed about judicial process going on with the offenders. They will have the opportunity to appear before the court and discuss the potential disposition of the juvenile. It should not affect the victims compensation benefits that are available. Juvenile offenders need to see the victimization they create with the people they perpetrate crimes with.

Richard Meeker, Chief Officer Juvenile Probation Officer Association - Helena, representing the Montana Juvenile Probation Officer's Association stated that this bill will help to keep the victims informed of their rights and help them to understand what is happening to them. We support HB#109.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1-14-91

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL STRIZICH, CHAIRMAN	/		
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/	W	
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		

DEPARTMENT OF FAMILY SERVICES

EXHIBIT 4
DATE 1-14-91
HB 26



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

January 14, 1991

TESTIMONY IN SUPPORT OF HB 26
AN ACT RELATING TO PRIVATE NON-AGENCY ADOPTIONS

Submitted by Betty Bay
Department of Family Services Adoption Specialist

The Department of Family Services supports HB 26, which makes changes in the existing law concerning the placement of a child for adoption by the birth parents. Changes include some new requirements and some to 'clean up' the law, but all are designed to improve the protection of children and birth parents involved in non-agency parental adoptive placements.

New requirements are as follows:

- that counseling be provided the birth mother and be made available to the birth father. Assurance must be provided that birth parents understand completely the impact of relinquishing the rights to their child and that they have not been unduly pressured, and
- that the relinquishment be executed in the presence of a district court judge and the adopting parents, to further assure adequate understanding of the action.

Changes requested to improve utilization of the law regarding parental adoptive placements include the following requirements:

- that a home study has been completed or that there is pre-placement contact with the adopting family before a child can be placed in the prospective adoptive parents' home,
- that adoptive parents and birth parents file a report of all agreements and money exchanged in connection with the adoption, and
- that the maximum penalty for charging excessive fees be increased to \$10,000 as a deterrent to black-marketing babies.

VISITORS' REGISTER

House Judiciary

COMMITTEE

BILL NO. HB# 24, 25, 26DATE 1-14-91SPONSOR Rep. Cody

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
BETTY BAY	HELENA	✓	
Marilyn McKibben	Helena	✓	
KENNETH GIERDE	GREAT FALLS	✓	
Lisa Payne / MT Women's Lobby	Helena	✓	
BILL DRISCOLL	Helena	✓ HB24 w/ amendment	
LINDA SARGENT ^{Montana} TRAN	HELENA	✓	
D. Mark Eicks	Helena	✓ HB 24 25 26	
Scott Crockett	HELENA	24	✓
Karen Northey	Helena	✓ 24 25 26	
JERRY WELLS	Helena		✓
Faye Berger	Helena		✓
Sister Marie Neil Bruch	Helena	✓	
Candy Wimmer	Helena		
Wenona + Gordon Peterson	G.T. Falls	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

incarceration. The method of incarceration, home arrest, is already in place in Montana. The Department of Institutions operates an intensive supervision program for certain inmates that are released from the Montana State Prison. The program consists of an electrical device that insures the inmate stays in his or her place of residence instead of in prison. REP. TOOLE handed out amendments suggested by the Department of Institutions. EXHIBIT 4

Proponents' Testimony:

James Pomeroy, Chief - Corrections Bureau, Department of Institutions, state that the Department of Institutions is in support of this bill once the amendments have been adopted by the committee. He stated that home arrest has been demonstrated to be a useful correctional tool and is growing in popularity in use throughout the country. The bill, as amended, will have some impact on the corrections division which will be revenue neutral. He felt that home arrest will impact the Department's probation and parole case loads.

Opponents' Testimony: none

Questions From Committee Members:

REP. WHALEN asked Mr. Pomeroy if the bill creates a situation where there is an increase of demand to place people in these places? Mr. Pomeroy stated that this is only an alternative and it goes along with the Department's fight to help the overcrowding problem the state is facing in our prison system.

Closing by Sponsor:

REP. TOOLE stated that this bill is a good alternative to prison sentencing and will aid in the problem of prison overcrowding. "I would urge the committee to support this bill."

EXECUTIVE ACTION ON HB 26

Motion: REP. DARKO MOVED HB 26 DO PASS.

Motion: REP. RICE moved to amend HB 26. EXHIBIT 5

Discussion:

REP. RICE stated that he had a concern about this bill during the hearing. There are different types of options that are authorized in the State. Those that are processed by the Department of Family Services, Private Adoption Agencies and those that come together without and intermediary. He stated that the later are considered private adoptions and they need to be separated from private adoption agencies. Private adoptions

make up about 80% of adoptions that go on in the state of Montana. He stated that his concern is that all the proponents were from Private Adoption Agencies and they proposed a bill that did not apply to them. He felt that they were proposing regulations that the private adoption process they were very strict and a burden to the private adoption process. "We may need to tighten up the regulations somewhat, but the extent that was proposed seems extreme."

REP. MEASURE asked if at this point the Department of Social Rehabilitation Services contract out the investigation of to a private agency and if the private agency determines counseling is necessary for any of the three individuals that enter into this agreement, they can request that?

REP. RICE stated that is correct.

REP. MEASURE stated that he liked the amendments. He stated that one of the reason the home study was done by a state agency because the state has a strong interest in these cases. He stated that he was a little leery of giving the authority to a private agency for counseling.

REP. RICE asked REP. MEASURE if he wanted the judge to make the decision in regard to counseling? REP. MEASURE said "yes". REP. RICE stated that it was his intent that the investigator would make the recommendation and the judge would make the decision to order counseling. He asked REP. MEASURE if that was agreeable to him? REP. MEASURE stated that it was and didn't realize it was in the bill.

REP. WHALEN stated that the home study is needed in a great many adoptions. The state needs to have a judge look over the home study and make the decision for counseling. He felt it was an important part of adoption.

REP. RUSSELL asked REP. RICE if the private adoptions he his referring to is primarily done by lawyers? REP. RICE stated that is correct.

Vote: Motion carried unanimously.

Motion/Vote: REP. RICE MOVED HB 26 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 148

Motion: REP. TOOLE MOVED HB 148 DO PASS.

Motion: REP. TOOLE moved to amend HB 148. EXHIBIT Motion carried.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 18, 1991

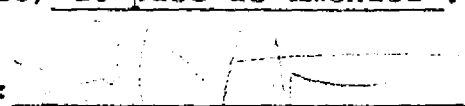
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 26 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 5 through 8.
Strike: "REQUIRING" on line 5 through "HOME;" on line 8
2. Title, lines 11 through 14.
Strike: "REQUIRING" on line 11 through "PARENTS;" on line 14
3. Page 3, line 12.
Strike: "as required by 40-8-122"
4. Page 3, line 14.
Following: "state"
Insert: "whether counseling for the birth parents is recommended
and"
5. Page 4, line 1.
Following: "and"
Insert: "and"
6. Page 4, lines 2 and 3.
Strike: lines 2 and 3 in their entirety
7. Page 4, line 4.
Strike: "(f)"
Insert: "(e)"
8. Page 4, line 24.
Strike: "(a)"
Renumber: subsequent subsections (i) through (iii) as (a) through (c).
9. Page 5, line 6
Strike: "or home study"

10. Page 5, line 7.

Strike: "[section 2]"

Insert: "subsection (3)"

11. Page 5, line 8.

Following: "received"

Insert: "any"

12. Page 5, lines 8 and 9.

Strike: "in accordance" on line 8 through "[section 3]" on line 9

Insert: "recommended by the report required by subsection (3) and ordered by the court"

13. Page 5, line 10 through line 16

Strike: subsection (b) in its entirety

14. Page 6, line 6 through page 8, line 4

Strike: sections 2 and 3 of the bill in their entirety

Renumber: subsequent sections

15. Page 9, line 2.

Page 10, line 11.

Strike: "or home study"

16. Page 11, line 21 through page 12, line 1.

Strike: subsection (9) in its entirety

Renumber: subsequent subsections

17. Page 12, line 13.

Strike: "4"

Insert: "2"

18. Page 12, line 16.

Strike: "Sections"

Insert: "Section"

Strike: "through 4"

Strike: "are"

Insert: "is"

19. Page 12, line 19.

Strike: "sections"

Insert: "section"

Strike: "through 4"

HB 0026/01

Proposed by Rep. Rice

HOUSE BILL NO. 26

INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE, NONAGENCY ADOPTIONS; ~~REQUIRING COUNSELLING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE~~; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING THE REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE ADOPTIVE HOME; ~~REQUIRING EXECUTION OF RELINQUISHMENT OF PARENTAL RIGHTS BY A BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE IN THE PRESENCE OF A DISTRICT COURT JUDGE AND THE PROSPECTIVE ADOPTIVE PARENTS~~, INCREASING THE MAXIMUM PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-8-109, MCA, is amended to read:

"40-8-109. Placement for adoption by parents parent -- adoption by nonrelative -- requirements before

relinquishment of parental rights. (1) No A parent may make a placement of who proposes to place a child for adoption with an individual who is not a the child's stepparent or a member of the child's extended family unless--the--parent files shall file with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents, executed voluntarily and in accordance with 40-6-135(2)-through-(4) subsection (8); and

(c) the report of agreements and disbursements required under 40-8-136.

(2) (a) The---notice---of---parental---placement---and---the relinquishment---shall---be---filed---prior---to---a---parent's---placement of---the---child---with---an---individual---who---intends---to---adopt---the child. The notice of parental placement shall must be signed by the parent making the placement and must contain the following information:

(a)(i) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b)(ii) the name and address of each prospective adoptive parent;

(c)(iii) the name and address or expected date and

place of birth of the child; and

(d)(iv) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties listed in (a)--through--(c)--of--subsection--(2) subsections (2)(a)(i) through (2)(a)(iii).

(b) The district court shall provide a copy of the notice to the parent making the placement.

(3) Upon receipt of a notice of parental placement and a--relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents to conduct an investigation, as required by 40-8-136, and report to the

court within 30 days but not earlier than 5--days 72 hours after the birth of the child. The report must state whether

the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents or, prospective adoptive parents, and their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth

① parents; and and

② ~~(e) that the requirements of sections 2 and 3 have~~

③ ~~been met, and~~

④ ~~(e)~~ (c) that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement and the relinquishment and the report required by 40-8-136, the court shall schedule a hearing to consider the proposed adoptive placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing shall--be is closed to all persons except those persons entitled to notice and their representatives or counsel.

②④ ~~(8) that~~ A parent may not execute a relinquishment of parental rights to an individual who is not the child's

Ex. 5
1-18-91
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recommended by the report
required by subsection (3) and
ordered by the court

1 stepparent or a member of the child's extended family until
2 the following criteria have been met:

(3) (a) ~~it~~ not less than 72 hours has elapsed since the birth
4 of the child, if the person relinquishing parental rights is
5 the child's birth mother;

(6) (b) ~~the~~ investigation ^{subsection (3)} or home study required by
7 ~~section 2~~ has been performed; and

(8) (c) ~~the~~ parent has received ^{any} counseling ^{in accordance}
9 with ~~section 3~~.

10 ~~(b) A relinquishment of parental rights by a birth~~
11 ~~mother under subsection (8) must be executed in district~~
12 ~~court in the presence of the district court judge and the~~
13 ~~prospective adoptive parents. A relinquishment under~~
14 ~~subsection (8) by any person other than a birth mother may~~
15 ~~be executed before a notary public. A relinquishment must~~
16 ~~comply with 40-8-135(3) and (4).~~

17 ~~(8)(9)~~ If the court finds that all requirements for
18 adoptive placement have been met, the court may issue an
19 order or schedule a hearing for the purpose of terminating
20 parental rights and granting temporary custody to the
21 prospective adoptive parents or it may issue a final decree
22 if a petition for adoption has been filed under 40-8-121.
23 The prospective adoptive parents must shall file their
24 petition to adopt within 30 days of the order.

25 ~~(9)(10)~~ If the court finds that all requirements for the

1 adoptive placement have not been met, the court may issue
2 any order appropriate to protect the child.

3 (11) The court shall send a copy of the final
4 determination made by the court under this section to the
5 central office of the department."

6 NEW SECTION. Section 2. Placement for adoption by
7 parent -- adoption by nonrelative -- preplacement
8 investigation or home study required of prospective adoptive
9 parent. (1) A prospective adoptive parent who wishes to
10 adopt a child under 40-8-109 shall initiate the nonagency
11 adoption process by requesting an investigation or home
12 study by the department or a licensed child-placing agency.
13 During the investigation or home study process, the
14 department or agency shall provide the prospective adoptive
15 parent information regarding the nonagency adoption process
16 and a copy of [section 3] and this section.

17 (2) The prospective adoptive parent and the home of the
18 prospective adoptive parent must be studied and evaluated
19 according to the department's or child-placing agency's
20 standards for placement of a child.

21 (3) The department or child-placing agency that
22 conducts the investigation or home study shall prepare a
23 written report containing the results of the investigation
24 or home study. The report must be attached to and made
25 part of the report required by 40-8-109(1).

NEW SECTION. ~~Section 3. Placement for adoption by~~

parent -- adoption by nonrelative -- birth mother counseling required. (1) In an adoption subject to 46-8-109, counseling of the birth mother is required. Counseling must also be offered to the birth father, if he is known and available.

(2) Counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of alternatives to adoption that are available to birth parents to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section;

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption; and

(d) the completion of birth parent social and medical history forms.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be

completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3).

NEW SECTION. ~~Section 3~~² Placement for adoption by

parent -- adoption by relative -- requirements. A parent may relinquish parental rights for the purposes of adoption of a child to the child's stepparent or a member of the child's extended family. The relinquishment must be executed voluntarily and in accordance with 40-6-135(2) through (4). The relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

~~Section 3~~³ Section 40-8-135, MCA, is amended to read:

"40-8-135. Adoption Placement for adoption by parent -- adoption by nonrelative -- fees -- violation -- penalty.

(1) Reasonable adoption fees may be charged by the child's birth--parent,--birth--parents,--or--guardian paid by the adoptive parent for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

- (a) a petition for adoption;
- (b) placement of a child;
- (c) medical care or services;
- (d) prenatal care;

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(e) foster care; or

(2) (f) investigation ~~on home study~~;

(g) counseling; or

(f)(h) other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater than that allowed under subsection (1) commits the offense of paying or charging excessive adoption process fees.

(3) A person convicted of the offense of paying or charging excessive adoption process fees may be fined an amount not to exceed \$1,000 \$10,000."

⁴
(13) Section ~~A~~ Section 40-8-136, MCA, is amended to read:

"40-8-136. Report Placement for adoption by parent -- adoption by nonrelative -- report of agreements and disbursements. (1) Prior to a hearing under 40-8-103, the birth parents or, prospective adoptive parents, and their representatives shall file with the court a report of agreements and disbursements, and they shall serve a copy of the report on the central office of the department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy

of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include all expenses related to:

(i) the birth of the child;

(ii) placement of the child with the identified adoptive parents, including an investigation ~~on home study~~;

(iii) counseling or medical or hospital care received by the birth parent or child prior to or after the child's birth; and

(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person."

⁵
(21) Section ~~A~~ Section 40-8-103, MCA, is amended to read:

"40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal

1 relationship between parent and child when it does not exist
2 genetically.

3 (2) "Adoptive parent" means an adult who has become the
4 mother or father of a child through the legal process of
5 adoption.

6 (3) "Agency" means a public or voluntary agency
7 licensed by any jurisdiction within the United States and
8 expressly empowered to place children as a preliminary to a
9 possible adoption.

10 (4) "Birth parent" means the mother or father of
11 genetic origin of a child but does not include a putative
12 father of a child.

13 (5) "Child" means any person under 18 years of age.

14 (6) "Court" means a Montana district court or a tribal
15 court of any Montana Indian reservation.

16 (7) "Department" means the department of family
17 services, as established and provided for in 2-15-2401.

18 (8) "Extended family member" means an adult who is the
19 child's grandparent, aunt or uncle, or brother or sister,
20 niece-or-nephew, or first-cousin.

21 ~~(9) "Home study" means the process of assisting the~~
22 ~~prospective adoptive parent or family to assess its own~~
23 ~~readiness to adopt and a determination by the department or~~
24 ~~a licensed child-placing agency of the compliance of the~~
25 ~~parent or family and its residence with applicable~~

① ~~standards.~~

2 ~~(9)~~ (10) "Parent" means the birth or adoptive mother or
3 the birth, adoptive, or legal father whose parental rights
4 have not been terminated.

5 ~~(10)~~ (11) "Placement for adoption" means the transfer of
6 physical custody of a child with respect to whom all
7 parental rights have been terminated and who is otherwise
8 legally free for adoption to a person who intends to adopt
9 the child.

10 ~~(11)~~ (12) "Relinquishment" means the informed and
11 voluntary release in writing of all parental rights with
12 respect to a child by a parent to an agency or individual
13 pursuant to 40-6-135, or 40-8-109, or [section 4], whichever
14 is applicable."

⑤ NEW SECTION. Section 8. Codification instruction.

⑥ [Section 2 through 4] ^{is} intended to be codified as an
17 integral part of Title 40, chapter 8, part 1, and the
18 provisions of Title 40, chapter 8, part 1, apply to
⑨ [section 2 through 4].

⑩ NEW SECTION. Section 8. Severability. If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

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8

NEW SECTION. Section 18 Effective date. [This act] is

effective July 1, 1991.

-End-

HEARING ON HOUSE BILL 25Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, said HB 25 requires a 72-hour period after birth of relinquishing of parental rights to allow a birth mother to consider her action.

Proponents' Testimony:

Ann Gilkey, DFS, stated her support of the bill, and provided written testimony (Exhibit # /).

Marilyn McKibben, Director, Catholic Social Services, stated she was speaking on behalf of all private agencies in the state. She explained that private agencies often get to clean up the mess created in direct adoption. Ms. McKibben said she believes birth mothers need time after birth to make this life-long decision which can never be rescinded. She told the Committee some young women sign documents before the birth and are put in a situation of believing they have already relinquished, and the date is added after the baby is born. She urged the Committee to support the bill.

Opponents' Testimony:

There were no opponents of HB 25.

Questions From Committee Members:

Chairman Pinsoneault asked about birth mothers requesting to not see the child. Representative Cody said this issue is not addressed by HB 25.

Senator Towe commented that maybe language could be added to the documents mother sign that they can be revoked within 72 hours after birth. Representative Cody replied that mothers can already change their mind until the final decree of adoption is ordered.

Senator Towe stated he believes this should be part of the planning process. Representative Cody stated that these young women participate in on-going counseling.

Closing by Sponsor:

Representative Cody waived closing until HB 26 is heard.

HEARING ON HOUSE BILL 26Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, told the Committee HB 26 has to do with regulating direct adoptions between the

natural parent and a non-relative. She said that because Montana has a good reputation for healthy babies, out-of-state people are looking to Montana to adopt. Representative Cody said she was concerned with not being able to check the homes babies are going to, the lack of counseling for parties involved, and that Montana should not be in the business of selling babies.

Representative Cody stated many women who use direct adoption don't want to appear in court.

Proponents' Testimony:

Ann Gilkey, DFS, said the Department supports the bill before and after amending, particularly the increasing penalty (Exhibit # 2).

Opponents' Testimony:

Bill Driscoll, Helena attorney representing Catholic Social Services, said the bill, as amended, gets rid of the requirement for birth mothers to get counseling before making the decision to place their child. He stated DFS is not required to do an investigation until after the mother makes a decision, and that he believes the bill should be as it was originally drafted.

Questions From Committee Members:

Senator Svrcek asked what if it were the judgment of a private agency that it would be in the best interest of the child to have it be adopted. Representative Cody replied she believes that a mother has the right to change her mind after birth.

Senator Towe asked Bill Driscoll why he no longer supported HB 26. Mr. Driscoll repeated his statement that it gets rid of the requirement that birth mothers get counseling before making the decision to place their child.

Senator Towe asked Bill Driscoll why he would oppose the bill when it is better than anything enacted now. Mr. Driscoll replied that the issues of the mother may not be settled until the child is already in the hands of the adoptive parents. He again stated this counseling should be handled prior to birth.

Senator Towe asked about language on page 2, lines 14-16 of the bill. Larry Driscoll replied his concerns arise from language on page 3, beginning on line 8. He said that under the Montana Uniform Parentage Act (Title 40), "the mother has to petition to change her mind, so the 72-hour requirement differs in that respect".

Senator Halligan asked if the 80 percent using direct adoption get a private attorney. Larry Driscoll replied that most of these mothers do not have lawyers and the natural parents are not present for proceedings. He told the Committee Chapter 6 of Title 40

applies to direct adoptions, and Chapter 8 applies to private adoptions. Mr. Driscoll pointed out the requirement in the adoption code, that prospective parents must undergo a home study by DFS.

Closing by Sponsor:

Representative Cody closed on House Bills 24, 25, and 26. She repeated that this is a much bigger issue than anyone addressed in 1989. She told the Committee, "I am a mother and grandmother, and I believe this issue should be addressed this session". Representative Cody stated there needs to be more openness for birth mothers, and said she is looking at the issue with a more simplistic view than attorneys do.

Representative Cody commented that she knows there is work to be done, and she asked the Committee for their consideration of the bills. Chairman Pinsonault assured Representative Cody that the Committee would work with her.

HEARING ON HOUSE BILL 69

Presentation and Opening Statement by Sponsor:

Representative Timothy Whalen, District 93, said HB 69 contains slight modifications to municipal courts, eliminating the population requirement of 10,000, and eliminating appeals to district court instead of retrying a case.

Proponents' Testimony:

Judge Larry Herman, Laurel City Judge, and prosecuting attorney, read from a prepared statement in support of the bill (Exhibit #3). Judge Herman also presented amendments to section 5 of the bill concerning clerk of court (Exhibit #). He stated it would be more feasible if the clerk of court be established by ordinance, as right now city clerks of court are city clerks.

Judge Herman also provided testimony from Judge Stewart in Billings (Exhibit #4).

Bruce McCandless, City of Billings, said he believes HB 69 would be workable with the proposed amendments, and if records prepared by the court can be electronically recorded.

Opponents' Testimony:

Patricia Bradley, Montana Magistrates, read from prepared testimony in opposition to HB 69 (Exhibit #5). She stated 3-6-101, MCA is adequate, and that no city has asked for the legislation. Ms. Bradley added, "This appears to be special-interest legislation.", and said Judge Neil Travis of Livingston, and judges from Red Lodge and Billings also oppose this bill.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52~~nd~~ LEGISLATIVE SESSION -- 199~~8~~

Date 30 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsonneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

DEPARTMENT OF FAMILY SERVICES

30 Jun 91
HB 26



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 26
AN ACT RELATING TO PRIVATE NON-AGENCY ADOPTIONS

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports HB 26 which makes changes in the existing law concerning the placement of a child for adoption by the birth parents. Changes include some new requirements, and some to 'clean up' the law, but all are designed to improve the protection of children and birth parents involved in non-agency parental adoptive placements.

In particular, the department supports the requirement that birth parents file a report of all agreements and money exchanged in connection with the adoption with the court and that the maximum penalty for charging excessive fees be increased to \$10,000 as a deterrent to black-marketing babies.

The Department of Family Services urges your support of HB 26.

DATE 30 January 21

COMMITTEE ON

Senato. Giudiciariu

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ann Gilkey	Dept. Family Serv. 201	HB 2526	X	
Barry Herman	Harold City Court	69	X	
Betty Bay	D.F.S	24 26 25	X	
Syd Ansfeld	Self	24, 25, 26	X	
PAUL BRADLEY	MT MAGISTRATES ASSN	HB 69		X
D. Mark Ricks	LPS Social Service	HB 24 25 26	X	
James McLaughlin	CITY OF BILLINGS	HB 69		
Yvonne Fagerstrom	Lutheran Social Service	HB 24 25 26	X	
Mariann McKibben	Catholic Social Services	24, 25, 26	X	
DAVE Brown	State Rep.	HB 24	X	
Bill Dunsell	Catholic Social Service	HB 24	X	
Rebecca Jones	Shodair (Montana Child	HB 24	X	
Interagency	Montana Right to Life	HB 24	X	
Bill Dunsell	Catholic Social Services	HB 26		X
Frank Thompson	MT Intercountry Adoptions	HB 25	X	
"	"	HB 26		X

made prior to birth. Chairman Pinsoneault advised the Committee that if a relinquishment were signed prior to birth that it does raise the possibility of the mother objecting to the adoption during that 72-hour period. He commented that 95 percent of cases are handled by attorneys and that such a situation would probably never slip through.

Amendments, Discussion and Votes:

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously. Chairman Pinsoneault asked Senator Grosfield to carry HB 25.

EXECUTIVE ACTION ON HOUSE BILL 26

Motion:

Discussion:

Valencia Lane advised the Committee that the bill, as originally drafted, would require that the birth mother involved in a direct adoption, go through counseling and would also require a home study for the adoptive parents. She stated that the House removed this language, so the bill is not much different than existing law.

Senator Mazurek stated a lot of work has been done in this area, and he believes the whole purpose is to put direct adoptions on the same plane as private adoptions. He said he believes the bill is almost a joke now. Valencia Lane added that this issue is not even addressed in court until an application to adopt is made after the birth.

Senator Mazurek suggested that the bill either be returned to its original status or be tabled. Valencia Lane speculated that the House removed the language as they may have viewed it as a burden on the mother. She added that counseling was required before birth in the bill as originally written.

Chairman Pinsoneault said the bill would suggest that direct adoptions are not doing the job. Valencia Lane reminded the Committee that the bill was drafted at the request of private adoption agencies, as those agencies appear to be disturbed that 80 percent of babies are adopted with no control or regulation.

Valencia Lane reported that currently DFS does home studies after placement by the birth mother. Senator Mazurek added that he

believes the bill is a reaction to advertising in the paper. He advised the Committee that in Montana, lawyers and doctors can't engage in arranging placements without a license. He further commented that these private agencies never contacted their counsel before the bill was drafted, and said he believes it is a policy choice which doesn't have merit.

Valencia Lane said she believes it was contemplated that DFS can contract to do home studies, and that the perception is that young mothers are being abused as most are not being represented by counsel, while most adoptive parents are.

Bill Driscoll, Catholic Social Services, stated the birth mother can get counseling from a licensed social worker or psychiatrist, according to language in the bill. He commented that there was a feature requesting that relinquishment in a private situation be signed in front of a judge. Mr. Driscoll reported that he got the agencies to leave this language out of the bill.

Chairman Pinsoneault commented he was sympathetic with Representative Cody. Senator Harp added that he was, too.

Senator Grosfield asked for the number of problem adoptions. Valencia Lane replied she did not know, as did Bill Driscoll. Mr. Driscoll commented that the bill is strictly a policy decision, and that as a matter of public policy, the Committee might want legislation concerning non-agency adoptions.

Amendments, Discussion, and Votes:

Senator Harp made a motion that HB 26 be amended to its original state, with the exception of deleting lines 12-18 on page 5.

Senator Grosfield said he as concerned with "shall" and "must" language in the bill. He stated it is too strong and allows no discretion. Valencia Lane addressed Senator Grosfield's concerns, and replied that on page 6, lines 2-4, language states the court can issue any order appropriate to the child.

The motion made by Senator Harp carried unanimously.

Senator Towe made a motion that language include "granting temporary custody to proposed adoptive parents or issuing final decree t adopt", following "child" on page 6, line 4.

The motion made by Senator Towe carried unanimously.

Recommendation and Vote:

Senator Harp made a motion that ~~WB~~ 26 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Senator Mazurek commented that the original House version of the bill could be obtained for inserting the changes.

EXECUTIVE ACTION ON HOUSE BILL 24

Motion:

Discussion:

Valencia Lane provided copies of the amendments proposed by Senator Grosfield (Exhibit #1). She stated the Human Rights Commission decision in Wheeler allows no discriminatory practices in any form, and that because of this ruling files are "sanitized" after preliminary screening. Ms. Lane stated that the prospective mother then could not know the religion, age, marital status, or religion of the adoptive family, and that DFS quit offering infant adoptive services because of this ruling.

Valencia Lane advised the Committee that the Wheeler ruling had the opposite effect of its intent. She stated the bill allows consideration of age, marital status, and religion. She said religion is a fundamental issue and the state cannot interfere without compelling interest, and that this applies to private adoption, as well.

Ms. Lane told the Committee the private agencies are requesting exemptions from the bill. She commented that LDS and Catholic Social Services have an age 40 cut-off.

Senator Grosfield explained he was only interested in amendments 6 and 7 of those he originally proposed. He stated that the effect of amendment 6 is that the DFS or other agencies can discriminate on the basis of age, marital status or religion. He said he believes the basis should be to make adoptions as easy as possible for the birth mother.

Senator Towe asked Senator Grosfield if he were trying to remove the latitude put into the bill. Valencia Lane replied that lines 17-19 were a House amendment, and that a religion-affiliated adoption agency can discriminate on the basis of religion if that is part of the religious policy. She explained that the House amended the bill to clarify original language concerning "non-arbitrary", but that amendment does not change the bill. Valencia Lane advised the Committee the amendment on page 2 is a "kind of flip-flop of that", and is not as good an amendment as it leaves out religious agencies.

Senator Towe said he would like to delete language on page 6 and leave the language at the bottom of page 3 and the top of page 4.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 5 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
February 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 26 (first reading copy -- white), respectfully report that House Bill No. 26 be amended and as so amended be concurred in:

1. Title, line 8.

Following: "~~HOME~~,"

Insert: "REQUIRING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME;"

2. Page 3, lines 14 and 15.

Following: "state" on line 14

Strike: remainder of line 14 through "AND" on line 15

3. Page 4, line 2.

Strike: "AND"

4. Page 4, line 4.

Following: "and"

Insert: "(e) that the requirements of [sections 2 and 3] have been met; and"

5. Page 4, line 5.

Strike: "(E)"

Insert: "(f)"

6. Page 5, line 4.

Strike: "(A)"

Insert: "(i)"

7. Page 5, line 7.

Strike: "(B)"

Insert: "(ii)"

Following: "study"

Insert: "or home study"

8. Page 5, line 8.
Strike: "SUBSECTION (3)"
Insert: "[section 2]"

9. Page 5, line 9.
Strike: "(C)"
Insert: "(iii)"
Strike: "ANY"

10. Page 5, lines 10 and 11.
Following: "~~section 2~~" on line 10
Strike: remainder of line 10 through "COURT" on line 11
Insert: "in accordance with [section 3]"

11. Page 6, line "
Following: "child"
Insert: ", including granting temporary custody to the
prospective adoptive parents or issuing a final decree if a
petition for adoption has been filed under 40-8-121"

12. Page 8, line 7.
Following: line 6
Insert: "NEW SECTION. Section 2. Placement for adoption by
parent -- adoption by nonrelative -- preplacement
investigation or home study required of prospective adoptive
parent. (1) A prospective adoptive parent who wishes to
adopt a child under 46-8-109 shall initiate the nonagency
adoption process by requesting an investigation or home
study by the department or a licensed child-placing agency.
During the investigation or home study process, the
department or agency shall provide the prospective adoptive
parent information regarding the nonagency adoption process
and a copy of [section 3] and this section.
(2) The prospective adoptive parent and the home of
the prospective adoptive parent must be studied and
evaluated according to the department's or child-placing
agency's standards for placement of a child.
(3) The department or child-placing agency that
conducts the investigation or home study shall prepare a
written report containing the results of the investigation
or home study. The report must be attached to and made a
part of the report required by 40-8-109(3).

NEW SECTION. Section 3. Placement for adoption by parent -- adoption by nonrelative -- birth mother counseling required. (1) In an adoption subject to 46-8-109, counseling of the birth mother is required. Counseling must also be offered to the birth father, if he is known and available.

(2) Counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of alternatives to adoption that are available to birth parents to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section;

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption; and

(d) the completion of birth parent social and medical history forms.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3)."

Renumber: subsequent sections

13. Page 10, line 13.

Following: "study"

Insert: "or home study"

14. Page 12, line 4.

Following: line 3

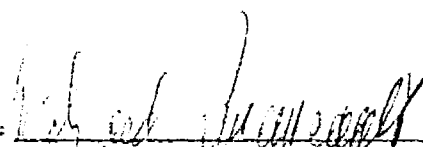
Insert: "(9) 'Home study' means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards."

Renumber: subsequent subsections

15. Page 12, line 15.
Strike: "2"
Insert: "4"

16. Page 12, line 18.
Strike: "SECTION"
Insert: "Sections"
Following: "4"
Insert: "through 4"
Strike: "IS"
Insert: "are"

17. Page 12, line 21.
Strike: "SECTION"
Insert: "sections"
Following: "4"
Insert: "through 4"

Signed: 

Richard Pinsoneault, Chairman

11-6-91
Amd. Coord.

SB 2-6
Sec. of Senate

4:50